International Center for Law & Economics

Comments of the International Center for Law & Economics

RE: Delete, Delete, Delete, GN Docket No. 25-13352

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I. Introduction

We thank the Federal Communications Commission (FCC or "the Commission") for the opportunity to offer comments to this public notice, "Delete, Delete, Delete," [1] "in which the agency seeks comment on every rule, regulation, or guidance document that the FCC should eliminate for the purposes of alleviating unnecessary regulatory burdens."[2] Described by Chairman Brendan Carr as a "sweeping deregulation initiative,"[3] this efforts builds on President Donald Trump's 2025 executive actions on regulatory reform.[4]

Toward that end, we urge the Commission to take the "Delete, Delete, Delete" concept as far as possible, effectuating a streamlined FCC that retains only those functions undeniably critical to national interests that cannot be handled effectively by market forces or other government entities. Our suggestions in these comments should be seen as a "first step" toward a comprehensive strategy to deregulate the U.S. communications markets.

Section II of these comments suggests significant initiatives that would increase competition, foster innovation, and improve consumer welfare. Section III identifies relatively straightforward regulations that could be eliminated or streamlined. Section IV offers a list of notices of inquiry (NOIs) and notices of proposed rulemaking (NPRMs) that should be terminated.

II. Significant Initiatives

The U.S. communications landscape bears little resemblance to the world that existed when the Communications Act of 1934 established the regulatory structure still largely in place today. The digital revolution has transformed how Americans communicate, consume media, and access information. Yet, the regulatory frameworks that govern these modes of communication remain fragmented across different technological platforms performing essentially identical functions. This section examines several key areas ripe for regulatory reform: the Title I/Title II classification disparity, outdated media-ownership restrictions, inefficient transaction-review processes, and anachronistic must-carry/retransmission-consent rules. Together, these proposals offer a coherent approach to modernizing communications regulation to better align with prevailing technological

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[1] *In Re: Delete, Delete, Delete* (FCC GN Docket No. 25-133, Mar. 12, 2025), *available at* https://docs.fcc.gov/public/attachments/DA-25-219A1.pdf. For simplicity, unless stated otherwise, "regulations" will collectively refer to rules, regulations, or guidance documents.

[2] Press Release, *FCC Chairman Carr Launches Massive Deregulation Initiative*, FED. COMMUN. COMM. (Mar. 12, 2025), *available at* https://docs.fcc.gov/public/attachments/DOC-410147A1.pdf.

[3] @BrendanCarrFCC, X.com (Mar. 12, 2025, 9:39 AM), https://x.com/BrendanCarrFCC/status/1899862730909037043.

[4] Presidential Action, *Ensuring Lawful Governance and Implementing the President's "Department of Government Efficiency" Deregulatory Initiative*, WHITE HOUSE (Feb. 19, 2025), https://www.whitehouse.gov/presidential-actions/2025/02/ensuring-lawful-governance-and-implementing-the-presidents-department-of-government-efficiency-regulatory-initiative; Presidential Action, *Directing the Repeal of Unlawful Regulations*, WHITE HOUSE (Apr. 9, 2025), https://www.whitehouse.gov/presidential-actions/2025/04/directing-the-repeal-of-unlawful-regulations.

realities, while also reducing unnecessary regulatory burdens that no longer serve their original purposes.

The proposals presented here share a foundation in common law and economics: that regulatory frameworks should reflect current market realities rather than historical technological distinctions. As communications technologies have converged, the artificial regulatory silos separating different transmission methods have become increasingly difficult to justify. By embracing a more technology-neutral approach focused on competitive outcomes, rather than legacy classifications, these reforms would create a more consistent and efficient regulatory environment that encourages innovation, while maintaining appropriate consumer protections. The following subsections outline specific approaches for reform in each area, along with practical implementation strategies that leverage existing statutory authorities to achieve meaningful deregulation without requiring comprehensive legislative action.

A. Title II Shell with Title I Contents (aka 'Title I for All')

The 6th U.S. Circuit Court of Appeals' recent decision to strike down the FCC's net-neutrality rules has revealed fundamental flaws in America's communications regulatory framework.[5] For nearly 90 years, traditional telephone services have been regulated as "telecommunications services" under Title II of the Communications Act, facing stringent common-carrier obligations.[6] Meanwhile, broadband internet is classified as an "information service" under the more flexible Title I framework. This regulatory disparity persists despite dramatic changes in how Americans communicate; indeed, landline usage has dropped to just 25% of households and most voice communication now occurs through internet-based platforms using VoIP technology.[7]

Moving telecommunications services from Title II to Title I regulation would create a more consistent framework that better reflects today's integrated communications landscape. The success of broadband under Title I demonstrates the benefits of this approach, with significant improvements in speed, availability, and competition since the early 2000s. Reclassifying traditional telecommunications under Title I would level the regulatory playing field, encourage infrastructure investment by reducing compliance costs, and establish a unified framework better aligned with modern digital-communications technology.

The most direct approach would be to reclassify all telecommunications services as "information services" under Title I. But without clear direction from Congress, this approach would likely face significant legal and political challenges, as evidenced by previous litigation over broadband classification under the guise of "net neutrality." Thus, the FCC could use its existing tools to

[5] *Ohio Telecom Ass'n v. FCC*, No. 24-3449 (6th Cir. 2025).

[6] Eric Fruits, *Title I for All: Time to Modernize America's Outdated Telecommunications Rules*, TRUTH MARK. (Jan. 6, 2025), https://truthonthemarket.com/2025/01/06/title-i-for-all-time-to-modernize-americas-outdated-telecommunications-rules.

[7] *Data Reveals Landline Phone Decline Statistics*, CHAMB. COMM. (Jul. 24, 2024), https://www.chamberofcommerce.org/landline-phone-statistics.

approach a *de facto* Title I regime for services currently classified under Title II. This approach would leverage several mechanisms.

1. Forbearance authority

Under Section 10(a) of the Telecommunications Act, the FCC has the power to refrain from, or *forbear*, enforcing certain Title II regulations if it determines that doing so is in the public interest. Specific forbearance targets include:

- Rate regulation (Sections 201-202, partially);
- Tariffing requirements (Section 203);
- Infrastructure-sharing mandates between incumbent local-exchange carriers (ILECs) and competitive local-exchange carriers (CLECs) (Sections 251-252);
- Accounting requirements (Sections 220, 260);
- Service-discontinuance approvals (Section 214); and
- Reporting requirements (Section 218).

2. Blanket approvals

The FCC has traditionally granted blanket approvals—broad and preemptive authorization for certain activities or services across entire categories—rather than requiring individual applications or case-by-case reviews. This approach eliminates the need for specific approvals for each instance of activity within the defined category, thereby expediting the processes and reducing administrative burdens significantly. For example, blanket approvals could allow telecommunications providers to implement infrastructure upgrades or service changes without undergoing lengthy regulatory reviews for each project. The FCC could streamline regulatory processes by issuing:

- Blanket Section 214 authorizations for entire categories of services;
- Presumptive approval for routine network changes (*e.g.*, copper replacement); and
- Self-certification processes for market entry and exit.

3. Safe harbors and blanket waivers

A *safe harbor* is a legal provision that protects entities from liability or penalties when they comply with specific conditions outlined in a statute or regulation. For example, the FCC has established safe harbors for blocking illegal robocalls, shielding providers from liability for inadvertently blocking lawful calls if they follow approved analytics and caller-ID authentication protocols.[8]

[8] *In the Matter of Advanced Methods to Target and Eliminate Unlawful Robocalls, Alarm Industry Communications Committee Petition for Clarification or Reconsideration, American Dental Association Petition for Clarification or Reconsideration* (CG Docket No. 17-59, FCC 20-96, Jul. 17, 2020), *available at* https://docs.fcc.gov/public/attachments/FCC-20-96A1.pdf.

A *blanket waiver* exempts a broad category of entities or activities from compliance with specific rules or requirements. Unlike case-by-case waivers, which are granted individually based on unique circumstances, blanket waivers apply universally to all parties within the defined scope. This approach simplifies regulatory processes and reduces administrative burdens for both the FCC and regulated entities. For instance, the National Telecommunications and Information Administration (NTIA) issued a blanket waiver under the Build America, Buy America Act to allow recipients of broadband-deployment grants to use certain foreign-manufactured components when domestic alternatives were unavailable.[9] The FCC should provide exemptions from certain rules, particularly where other regulations might already provide adequate consumer protection, such as:

- Reporting requirements and service-quality standards;
- Network-modification notifications;
- Customer disclosure rules that duplicate Federal Trade Commission (FTC) requirements; and
- Legacy service-support obligations.

4. Pro-competition regulatory presumptions

Pro-competition regulatory presumptions are policy principles that assume, by default, that market forces are sufficient to ensure fair practices, innovation, and consumer benefits in competitive markets. These presumptions shift the regulatory burden by requiring regulators to provide clear evidence of market failure before imposing new rules or maintaining existing ones. The goal is to reduce unnecessary regulation, foster competition, and encourage investment and innovation in the telecommunications sector. Such presumptions include:

- Competitive markets naturally drive providers to offer reasonable rates, improve service quality, and innovate without the need for heavy regulatory intervention;
- New technologies and services should be subject to minimal regulation by default, allowing them to develop and compete freely unless there is evidence of harm to consumers or competition;
- Regulatory action should only occur when there is clear, demonstrable evidence of market failure or anticompetitive behavior, ensuring that regulation addresses specific problems without stifling industry growth; and
- Past regulations should be reviewed regularly to determine whether they remain necessary in light of current market conditions; obsolete or redundant rules should be repealed.

[9] *Limited Applicability Nonavailability Waiver of the Buy America Domestic Content Procurement Preference as Applied to Recipients of Middle Mile Grant Program Awards*, NAT'L. TELECOMMUN. INF. ADM. (Apr. 19, 2023), *available at* https://www.commerce.gov/sites/default/files/2023-04/NTIA%20Middle%20Mile%20Final%20Waiver.pdf.

By reducing regulatory uncertainty and compliance costs, these presumptions aim to create an environment conducive to investment in infrastructure and the development of new technologies.

One notable example of a pro-competition regulatory presumption is the FCC's 2015 decision to adopt a rebuttable presumption that cable systems are subject to "effective competition."[10] Prior to this change, the FCC presumed that cable operators lacked effective competition unless proven otherwise by challengers. This earlier presumption allowed local franchising authorities to regulate basic cable rates in most markets.

In 2015, the FCC reversed this presumption, reflecting changes in the multichannel video programming distributor (MVPD) marketplace. The agency cited increased competition from satellite providers (*e.g.*, DirecTV and DISH) and telephone companies (*e.g.*, Verizon FiOS and AT&T U-verse) as evidence that most cable operators now face effective competition. Under the new presumption, local authorities could no longer regulate basic cable rates unless they successfully rebutted the presumption by proving a lack of effective competition. This shift reduced regulatory burdens on cable operators—particularly smaller providers—while aligning regulations with the competitive realities of the video marketplace. The FCC justified this change as a way to "reflect the current MVPD marketplace,"[11] reduce unnecessary regulation, and promote innovation and investment in video services.

B. Media-Ownership Rules

The FCC's quadrennial review process, established by Section 202(h) of the Telecommunications Act of 1996, provides a powerful mechanism for media-ownership deregulation that has been underutilized. The statutory language requires the FCC to review ownership rules every four years and to "repeal or modify" any regulation that is no longer "necessary in the public interest as the result of competition."[12]

While courts have interpreted "necessary" to mean "convenient, useful, or helpful," rather than "essential or indispensable," the process still provides substantial flexibility.[13] The FCC can reasonably argue that, in today's digital environment, almost none of the legacy ownership restrictions meet even this more lenient standard of necessity. The legislative history—or rather, the lack thereof—is also advantageous, as Section 202(h) was inserted without significant public

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[10] *In the Matter of Amendment to the Commission's Rules Concerning Effective Competition, Implementation of Section 111 of the STELA Reauthorization Act* (MB Docket No. 15-53, FCC 15-62, Jun. 3, 2015), *available at* https://docs.fcc.gov/public/attachments/FCC-15-62A1.pdf.

[11] *Id.* at ¶ 1.

[12] Codified at 47 U.S.C. §161(b).

[13] *See Prometheus Radio Project v. FCC*, 373 F.3d 372, 415 (2004), *cert. denied*, 545 U.S. 1123 (2005).

discussion or scrutiny, reducing the constraints of legislative intent that might otherwise limit aggressive deregulation.[14]

1. Redefining the relevant competitive market

Historically, the FCC has narrowly defined the "relevant competitive market" as competition among broadcast stations within a designated market area.[15] This outdated conception fails to acknowledge the reality that broadcasters now compete directly with digital platforms, streaming services, social media, and online content providers for both audience attention and advertising revenue.

The FCC's 2017 "Order on Reconsideration,"[16] upheld unanimously by the U.S. Supreme Court in *FCC v. Prometheus Radio Project*, established a critical precedent for this broader market definition when it eliminated the newspaper/broadcast and radio/television cross-ownership rules.[17] As we argued in our *amicus* brief before the Court, "[i]n the 24 years since the 1996 Act was enacted, the FCC has made repeated, good faith efforts to comply with its statutory mandate to repeal or modify regulations that are no longer necessary because of the competition local newspapers and broadcast stations now face from new digital media. But for most of that period, a single panel of judges on the Third Circuit has blocked those congressionally mandated regulatory reform efforts."[18]

Importantly, the Supreme Court agreed. Writing for a unanimous Court, Justice Brett Kavanaugh concluded that the FCC had acted reasonably in determining that the media-ownership rules in question were no longer necessary to serve the agency's public-interest goals—including viewpoint diversity—given the dramatic changes in the media marketplace. The Court emphasized that "[t]he FCC reasoned that the historical justifications for those ownership rules no longer apply in today's media market,"[19] and it reversed the lower court for having "substitute[d] its own policy judgment" for the agency's.[20] In doing so, the Court reaffirmed the FCC's authority to make predictive

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[14] Andrew Jay Schwartzman, Harold Feld, & Parul Desai, *Section 202(h) of the Telecommunications Act of 1996: Beware of Intended Consequences*, 58 FED. COMM. L.J. 581, 583 ("There is no legislative history explaining its origin or what Congress may have intended in adopting it. Nor could there have been any meaningful discussion of what its unidentified sponsors may have sought, or what the conference committee which adopted it might have thought, as Section 202(h) was not subject to any public discussion prior to its adoption. Indeed, for several years after enactment of the 1996 Act, no one would publicly claim credit for having anything to do with its drafting and enactment.")

[15] Dana A. Scherer, *The FCC's Rules and Policies Regarding Media Ownership, Attribution, and Ownership Diversity*, CONGR. RES. SERV. (Dec. 16, 2016), *available at* https://www.congress.gov/crs_external_products/R/PDF/R43936/R43936.6.pdf.

[16] *In Re: 2014 Quadrennial Regulatory Review–Order on Reconsideration and Notice of Proposed Rulemaking* (32 FCC Rcd. 9802, 2017).

[17] *FCC v. Prometheus Radio Project*, 592 U.S. 414, 417 (2021) [hereinafter "Prometheus Decision"].

[18] *Brief of the International Center for Law & Economics as Amicus Curiae in Support of Petitioners, Nat'l Ass'n of Broadcasters v. Prometheus Radio Project, No 19-1241*, INT'L. CTR. LAW ECON. (May 22, 2020), at 17, *available at* https://laweconcenter.org/wp-content/uploads/2020/05/ICLE-Amicus-Brief-96910004_1.pdf.

[19] Prometheus Decision at 426.

[20] Prometheus Decision at 423.

judgments grounded in a broader conception of media competition that accounts for digital platforms, online content, and the modern information ecosystem.

The FCC should consider this broader market definition, and gather data that demonstrates how digital platforms have captured significant market share in news consumption, entertainment viewing, and advertising expenditures—all areas where broadcasters traditionally dominated.[21]

A particularly compelling argument centers on the asymmetric regulatory burden: digital competitors operate without the same ownership restrictions that apply to broadcasters, creating an uneven playing field.[22] The FCC should emphasize that, rather than protect competition, maintaining ownership restrictions in this environment actually harms it. Indeed, it serves to prevent traditional media from achieving the scale necessary to compete effectively with digital giants.

2. Strategic targeting of specific rules

Rather than a scattershot approach, "Delete, Delete, Delete" should prioritize specific rules for elimination based on their vulnerability to competition-based arguments and precedential value.

Local radio-ownership limits are particularly ripe for elimination. The profusion of streaming-audio services (Spotify, Apple Music, Pandora), podcasts, and satellite radio has fundamentally transformed audio consumption. The current tiered limits (*e.g.*, allowing ownership of up to eight stations in markets with more than 45 stations) were established before these digital competitors existed.[23] Economic data showing declining radio advertising revenue (shown in Figure 1[24] below) and shifting audience demographics can powerfully demonstrate that these limits no longer serve their original purpose.

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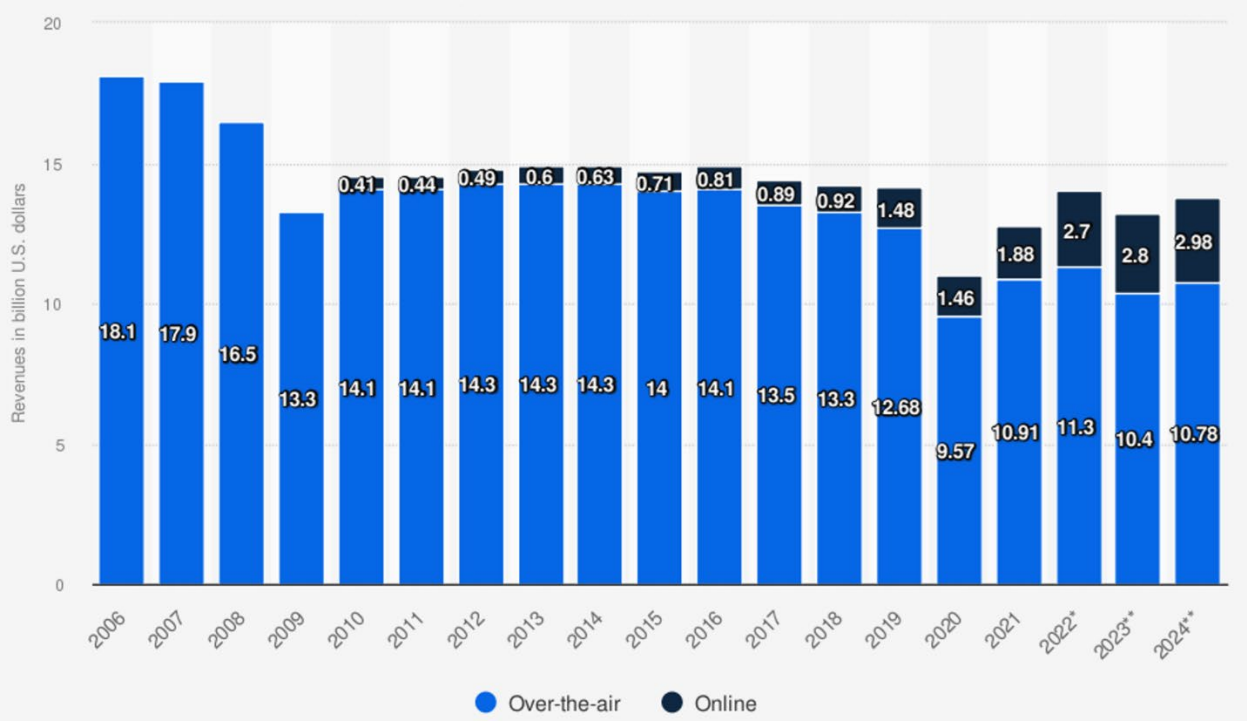
[21] *See id.* at 5-6 ("In the quarter century since the 1996 Act was enacted, competition from digital media has grown exponentially. Today, Americans have access to video and audio programming over hundreds of channels from both cable and satellite distributors. Americans also now have access to thousands of websites from which they can and do get whatever information they need—be it news, sports, or entertainment. And unlike in 1996, Americans can now enjoy video and audio programming and obtain a wide range of information from online websites either on a smart TV in their home or office or on a smartphone or tablet they can carry with them wherever they are.").

[22] Eric Fruits, *Media-Ownership Regulations in a Streaming World: Time to Change the Channel*, TRUTH MARK. (Mar. 5, 2025), https://truthonthemarket.com/2025/03/05/media-ownership-regulations-in-a-streaming-world-time-to-change-the-channel.

[23] Scherer, *supra* note 15.

[24] *Radio Station Advertising Revenues in the United States from 2006 to 2024, by Type*, STATISTA (Mar. 2024), https://www.statista.com/statistics/253185/radio-station-revenues-in-the-us-by-source.

FIGURE 1: US Radio-Station Advertising Revenues by Type, 2006-2024 ($B)



SOURCES: *Statista, BIA Advisory Services, Inside Radio*

Building on the 2017 modifications that replaced the flat ban on owning two top-four stations with a case-by-case review process,[25] the FCC should also now eliminate **local television-ownership rule** entirely. The proliferation of streaming-video services, social-media video content, and online news sources has fractured the television audience, making strict ownership limits unnecessary to ensure diverse viewpoints. Particular emphasis should be placed on how viewership patterns among younger demographics have shifted dramatically away from broadcast television, undermining the scarcity rationale.[26]

3. Addressing diversity and localism concerns

The most significant obstacle to easing media ownership is the concern that deregulation will harm media diversity and localism. Rather than avoid these concerns, the FCC should reframe them as better addressed through alternative means in the digital age.

For diversity, the Commission should argue that ownership limits are a crude and ineffective tool to promote viewpoint diversity in an era when consumers have access to virtually unlimited

[25] *See* Order, *In the Matter of 2014 Quadrennial Regulatory Review*, MB Docket 14-50 (Jun. 4, 2021), *available at* https://docs.fcc.gov/public/attachments/DA-21-656A1.pdf

[26] For example, Nielsen information indicates that, from October 2023 to February 2025, broadcast viewing declined from 24.6% of viewing time to 21.2%, while streaming increased from 36.6% to 43.5%. *See The Gauge*, NIELSEN CO. (Feb. 2025), https://www.nielsen.com/data-center/the-gauge.

information sources online. The agency can propose that targeted programs supporting minority and female ownership would be more effective than blanket ownership restrictions that primarily benefit incumbent players.

For localism, the evidence suggests that economically struggling broadcast stations actually reduce their local-news coverage and rely more heavily on syndicated content.[27] The FCC should consider case studies demonstrating how consolidated ownership groups have sometimes increased their local-news investments by sharing resources across stations, while maintaining separate editorial operations. Additionally, the rise of digital-only local-news outlets is evidence that local-information needs can be met through multiple channels beyond traditional broadcasting.

The Supreme Court's decision in *Prometheus* provides critical support here, as the Court held that the FCC's conclusion that the repeal of the cross-ownership rules "would not have a material impact on minority and female ownership"[28] was reasonable and supported by the evidence, even if that evidence was not as comprehensive as some might prefer.

By leveraging the statutory mandate of Section 202(h), redefining the relevant competitive market to include digital platforms, strategically targeting vulnerable rules with compelling evidence, and proactively addressing diversity and localism concerns, the FCC can implement a substantial deregulatory agenda that would withstand legal scrutiny.

C. Transaction-Review Process

The FCC's transaction-review process, rooted in the Communications Act of 1934, has evolved into a complex, time-consuming, and often unpredictable system that frequently duplicates efforts already undertaken by antitrust authorities.[29] The current dual-review system imposes substantial costs on merging parties without clear commensurate benefits. While the FTC and U.S. Justice Department (DOJ) focus narrowly on demonstrable competitive harms, the FCC employs a broader and more ambiguous "public interest" standard that allows for wide-ranging inquiries, and often demands conditions that extend beyond competition concerns.[30] This expansive approach not only creates regulatory uncertainty but also significantly increases transaction costs and extends timelines for

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[27] *See, e.g.*, Kayla Wassell, *Why Broadcast TV Stations and Daytime Programming "Are In Big Trouble,"* CORD CUTTERS NEWS (Aug. 24, 2023), https://cordcuttersnews.com/why-broadcast-tv-stations-and-daytime-programming-are-in-big-trouble ("Local television stations are also scaling back on spending by shifting toward airing low-cost reruns and game shows.").

[28] Prometheus Decision at 427.

[29] *See, e.g.*, James R. Weiss & Martin L. Stern, *Serving Two Masters: The Dual Jurisdiction of the FCC and the Justice Department over Telecommunications Transactions*, 6 COMMLAW CONSPECTUS 195, 206 (1998); William J. Rinner, *Optimizing Dual Agency Review of Telecommunications Mergers*, 118 YALE L. J. 1571 (2009).

[30] Geoffrey Manne, Will Rinehart, Ben Sperry, Matt Starr, & Berin Szoka, *The Law and Economics of the FCC's Transaction Review Process*, TPRC 41: THE 41ST RESEARCH CONFERENCE ON COMMUNICATION, INFORMATION AND INTERNET POLICY (Aug. 23, 2023), *available at* SSRN: https://ssrn.com/abstract=2242681 *or* https://laweconcenter.org/wp-content/uploads/2013/08/SSRN-id2242681.pdf.

business combinations that might otherwise benefit consumers through enhanced efficiencies and innovation.[31]

1. Eliminating duplicative data requirements

One immediate target for deregulation involves the extensive information requirements imposed on merger applicants. Merging parties currently must provide substantially similar competitive analyses and market data to both antitrust authorities and the FCC. This redundancy creates unnecessary administrative burdens, without providing proportionate regulatory benefits. Under the cost-benefit and regulatory-context principles of "Delete, Delete, Delete," the FCC should eliminate requirements for data already submitted to antitrust authorities and instead implement a streamlined process that allows applicants to incorporate such materials by reference.

The FCC should also revise Form 604 (used for license transfers) to remove information requirements that extend beyond those necessary to evaluate specific, transaction-related public-interest concerns. By reducing these informational burdens, the Commission can decrease both the direct costs to applicants and the indirect costs associated with extended review timelines.

2. Reformulating the 'public interest' standard

Perhaps the most significant opportunity for meaningful deregulation involves narrowing the scope of the FCC's interpretation of the "public interest" standard in the merger context. The current expansive interpretation has allowed the Commission to address matters only tangentially related to the transaction at-hand, effectively turning merger reviews into *de-facto* rulemaking proceedings.[32] This approach creates substantial regulatory uncertainty and violates the principle that regulatory interventions should be narrowly tailored to address specific, demonstrable harms.[33]

The FCC should issue a policy statement clarifying that its merger analysis will focus primarily on transaction-specific competitive effects that fall within its unique expertise regarding communications markets. This would align the FCC's approach more closely with antitrust principles, while recognizing the Commission's specialized knowledge. The reformulated standard should establish a rebuttable presumption that mergers that do not create demonstrable competitive harms serve the public interest, shifting the burden of proof from the applicants to the Commission to identify specific transaction-related harms.

This reformulation aligns with the "efficacy" and "legal framework" principles of "Delete, Delete, Delete," as it would ensure that FCC reviews focus on areas where they can add unique value beyond

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[31] Weiss & Stern, *id.*, at 205.

[32] Manne *et al.*, *supra* note 30 ("In effect, the agency uses transaction reviews to impose the kinds of regulations that would otherwise require a formal rulemaking. In addition to side-stepping notice-and-comment requirements, this regulation-by-merger-condition creates a crazy quilt where different rules apply to different companies, sometimes in different markets.").

[33] STEPHEN BREYER, REGULATION AND ITS REFORM (1982).

the antitrust review. It would also reflect the changing legal landscape following the Supreme Court's decision in *Loper Bright Enterprises v. Raimondo*.[34]

3. *Implementing tiered review procedures*

While the FCC's practice of transaction review is often *ad hoc*, the policy of review amounts to a one-size-fits-all approach that fails to account for the vast differences in complexity and potential impact among various communications transactions. Under the "practicality" principle of "Delete, Delete, Delete," the FCC should establish a tiered review system, with expedited procedures for transactions that are unlikely to raise significant competitive or public-interest concerns.

For smaller transactions or those in more competitive markets, the Commission should implement a streamlined 45-day review process with abbreviated public-comment periods (15 days rather than 30) and presumptive approval absent specific identified concerns. For mid-tier transactions, a 90-day review timeline would apply, while only the largest or most complex transactions would warrant the full 180-day review period.

This tiered approach would reduce the regulatory burdens on smaller market participants, for whom the current process creates disproportionate barriers to entry. It would also allow the Commission to focus its resources on transactions with the greatest potential impact on consumers and competition.

4. *Constraining merger conditions*

The FCC's practice of imposing extensive "voluntary" conditions on merging parties has evolved into a problematic form of regulation outside the traditional rulemaking process.[35] These conditions often extend well beyond addressing specific transaction-related harms and frequently include commitments related to broader policy objectives that could more appropriately be addressed through industrywide rulemaking.

Under the "cost-benefit" and "legal framework" principles, the FCC should establish clear guidelines that limit merger conditions to those that are: (1) directly related to mitigating specific, transaction-specific harms; (2) narrowly tailored to address those harms; and (3) limited in duration, with specific sunset provisions. The guidelines should explicitly prohibit the use of merger conditions as vehicles to advance policy objectives unrelated to the transaction or for extracting commitments that the Commission could not otherwise impose through its direct regulatory authority.

For any conditions that extend beyond remedying competitive harms, the Commission should be required to provide a detailed cost-benefit analysis demonstrating that the public-interest benefits of

[34] 603 U.S. 369 (2024).

[35] Philip J. Weiser, *Reexamining the Legacy of Dual Regulation: Reforming Dual Merger Review by the DOJ and the FCC*, 61 FED. COMM. L.J. 167, 170.

the condition substantially outweigh the costs imposed on the merging parties and, by extension, consumers.

5. Enhancing coordination with antitrust authorities

To reduce redundancy and improve efficiency, the FCC should formalize coordination procedures with the DOJ and FTC. This should include:

- Establishing a presumption that the FCC will defer to antitrust authorities' competitive analysis in areas of overlapping jurisdiction;
- Creating joint information-sharing protocols to eliminate duplicative information requests;
- Aligning review timelines to provide greater predictability to merging parties; and
- Developing consultation procedures for merger conditions to ensure consistency in remedies.

By formalizing this coordination, the FCC can focus its review on unique communications-policy issues, while leveraging the antitrust agencies' expertise in competitive analysis. This approach would reduce regulatory burdens without sacrificing consumer protection.

6. Implementing sunset reviews for existing rules

Many of the FCC's current merger-review procedures have developed incrementally over decades without systematic evaluation of their continued necessity or effectiveness. Given the present focus on eliminating outdated regulations, the Commission should establish a comprehensive sunset-review process for all aspects of its merger-review framework. This process should include:

- Regular review of information requirements to eliminate outdated or unnecessary data collection;
- Systematic evaluation of past merger conditions to assess their effectiveness and determine whether similar conditions should be imposed in future transactions; and
- Periodic reassessment of procedural timelines to identify opportunities for further streamlining.

By implementing these sunset provisions, the FCC can ensure that its merger-review process remains relevant, efficient, and focused on contemporary market realities rather than historical regulatory approaches.

D. Forced-Access Rules: Must-Carry, Program Carriage, and Leased Access

The FCC regulates the relationship between television broadcasters and cable/satellite operators through must-carry and retransmission-consent rules. Established to protect local broadcasters, must-carry rules require cable and satellite providers to carry certain local television stations in their

channel lineups.[36] Program-carriage rules, stemming from the 1992 Cable Act, apply to vertically integrated video programmers, and prohibit discrimination against nonaffiliate programming, as well as banning exclusive contracts unless the Commission determines they are in the public interest. Leased-access requirements from the 1992 Cable Act compel cable operators to set aside a certain percentage of their channels for commercial use by persons unaffiliated with the operator.[37]

Much as with the Fairness Doctrine, the FCC should open dockets to consider repealing these rules as inconsistent with the First Amendment, due to changes in the marketplace that undercut the original rationales justifying intermediate scrutiny.[38] Given the changed circumstances, the rules should be analyzed as though under a strict-scrutiny review by a court. From this vantage, the rules, which amount to compelled speech, would be unlikely to survive.

In *Turner Broadcasting System v. FCC*,[39] the Supreme Court applied intermediate scrutiny to the challenged must-carry provisions due to the special nature of cable in the marketplace. The Court pointed to the fact that "[w]hen an individual subscribes to cable, the physical connection between the television set and the cable network gives the cable operator bottleneck, or gatekeeper, control over most (if not all) of the television programming that is channeled into the subscriber's home."[40] As a result, a cable distributor would be positioned to "prevent its subscribers from obtaining access to programming it chooses to exclude."[41]

Thus, must-carry provisions were "justified by the special characteristics of the cable medium: the bottleneck monopoly power exercised by cable operators and the dangers this power poses to the viability of broadcast television."[42] Cable operators had a local monopoly over cable service to households, as only "one percent of communities [were] served by more than one cable system."[43] This effectively gave cable operators the ability to "silence the voice of competing speakers with a mere flick of the switch."[44] Based on the same rationale as *Turner*, the U.S. Court of Appeals for the

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[36] Eric Fruits, *Blackout Rebates: Tipping the Scales at the FCC*, TRUTH MARK. (Mar. 6, 2024), https://truthonthemarket.com/2024/03/06/blackout-rebates-tipping-the-scales-at-the-fcc/.

[37] 47 U.S.C. § 532.

[38] Memorandum Opinion and Order, *In Re: Complaint of Syracuse Peace Council Against Television Station WTVH*, FED. COMMUN. COMM'N (2 FCC Rcd Vol. 17, Aug. 4, 1987), at 5058, *available at* https://docs.fcc.gov/public/attachments/FCC-87-266A1.pdf (concluding that "the dramatic transformation in the telecommunications marketplace [since *Red Lion*] provides a basis for the Cour to reconsider its application of diminished First Amendment protection to the electronic media").

[39] 512 U.S. 622 (1994) (*Turner I*).

[40] *Id.* at 656.

[41] *Id.*

[42] *Id.* at 661.

[43] *Turner Broadcasting System v. FCC*, 520 U.S. 180, 197 (1997) (*Turner II*).

[44] *Id.* (quoting *Turner I*, 512 U.S. at 656).

D.C. Circuit upheld program-carriage and leased-access rules in *Time Warner Entertainment Co. v. FCC*.[45]

It is clear today that this is no longer the case. As then-Judge Kavanaugh put it when analyzing program-carriage requirements under Section 616 of the Communications Act:

> But in the 16 years since the last of those cases [Time Warner] was decided, the video programming distribution market has changed dramatically, especially with the rapid growth of satellite and Internet providers. This Court has previously described the massive transformation, explaining that cable operators "no longer have the bottleneck power over programming that concerned the Congress in 1992." Comcast Corp. v. FCC, 579 F.3d 1, 8 (D.C. Cir. 2009); see also Cablevision Systems Corp. v. FCC, 597 F.3d 1306, 1324 (D.C. Cir. 2010) (Kavanaugh, J., dissenting) ("This radically changed and highly competitive marketplace—where no cable operator exercises market power in the downstream or upstream markets and no national video programming network is so powerful as to dominate the programming market—completely eviscerates the justification we relied on in Time Warner for the ban on exclusive contracts.")... In today's highly competitive market, neither Comcast or any other video programming distributor possesses market power in the national video programming distribution market... Therefore, under these circumstances, the FCC cannot tell Comcast how to exercise its editorial discretion about what networks to carry any more than the Government can tell Amazon or Politics and Prose or Barnes & Noble what books to sell; or tell the Wall Street Journal or Politico or the Drudge Report what columns to carry; or tell the MLB Network or ESPN or CBS what games to show; or tell SCOTUSblog or How Appealing or The Volokh Conspiracy what legal briefs to feature.[46]

The FCC has already gathered considerable data on the vast changes in the video marketplace. It should consider opening dockets on how these changes undercut the constitutionality of forced-access rules.

E. Ensuring US Leadership in the Global Satellite Economy

The FCC should prioritize regulatory reforms to strengthen the competitiveness of U.S. firms in the rapidly evolving global space and satellite-communications sector. As private enterprises drive innovation in satellite technology and low-earth-orbit (LEO) deployments, overly restrictive or outdated domestic regulations risk ceding American leadership to foreign competitors operating under less burdensome oversight frameworks. Indeed, establishing a regulatory regime that encourages innovation, investment, and competition is critical to ensure continued U.S. dominance in the sector.[47]

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[45] 93 F.3d 957 (D.C. Cir. 1996).

[46] *Comcast Cable Commcn's v. FCC*, 717 F.3d 982, 993-94 (2013) (Kavanaugh, J., concurring).

[47] *See* Kristian Stout & Michael Calabrese, *Competition in the Low-Earth-Orbit Satellite Industry*, TRUTH MARK. (Oct. 10, 2023), https://truthonthemarket.com/2023/10/10/competition-in-the-low-earth-orbit-satellite-industry.

A top-to-bottom review of FCC space and satellite policies is warranted to identify and eliminate regulatory asymmetries disadvantaging U.S.-licensed providers. Disparate treatment—such as more onerous licensing timelines, excessive equipment pre-certification requirements, and redundant importation rules—can generate substantial uncertainty and delays. These regulatory burdens impose direct costs on companies and broader costs on U.S. consumers and national interests—deterring innovation, discouraging capital investment, and reducing America's global market share.

A particularly urgent area for reform concerns the equivalent power flux-density (EPFD) limits that govern the signal strength permitted for non-geostationary (NGSO) satellite transmissions. These limits—established by the International Telecommunication Union (ITU) in the late 1990s—were designed to prevent harmful interference with geostationary (GSO) satellites, but they reflect technological assumptions from a much earlier era. Modern NGSO systems—equipped with steerable beams, advanced signal processing, and adaptive interference mitigation—are artificially constrained by these outdated rules. As a result, current EPFD limits are a tremendous regulatory restriction on the ability of NGSO systems to serve consumers efficiently and cost-effectively.

The FCC has already recognized this issue by initiating an NPRM (SB Docket No. 25-157) to study the NGSO-GSO sharing regime in the 10.7–12.7 GHz, 17.3–18.6 GHz, and 19.7–20.2 GHz bands. The Commission should exploit the existing NPRM process to fully evaluate modernized EPFD methodologies and accelerate a transition toward a more efficient and evidence-based spectrum-sharing framework that maintains GSO protections while enabling the full potential of NGSO constellations. Ensuring that NGSO providers can deliver affordable high-capacity broadband to unserved and underserved populations is a national imperative, and the FCC must not allow regulatory inertia to serve as a barrier to this goal.

More broadly, to address the foregoing critical issues, the FCC should:

- **Eliminate outdated pre-certification importation rules that stifle innovation and prototyping**. The permissible-weight thresholds for satellite hardware imported prior to authorization should either be significantly increased or entirely eliminated, thereby removing logistical burdens and fostering more agile development cycles.
- **Streamline equipment authorization for composite systems, including satellite constellations employing modular or multi-band designs.** Current authorization processes do not reflect the practical realities of how these systems are built and tested, causing unnecessary duplication and market-entry delays.
- **Remove unnecessary FCC-logo and compliance-statement requirements for unintentional radiators**. These mandates add complexity without any substantial consumer-protection benefit, being more appropriate for retail electronics, rather than professional-grade satellite hardware.
- **Resolve regulatory uncertainty in the 6 GHz band, recognizing the significant concerns of Wi-Fi providers and other terrestrial users**. It is critical to establish a balanced framework that addresses these concerns while allowing satellite and terrestrial unlicensed operations to

coexist effectively. Resolving this uncertainty will help unlock beneficial uses of spectrum and support potential innovations in service.

- **Review and modernize legacy guidance documents governing space and earth-station operations**. Many existing policies reflect outdated technological assumptions and do not adequately accommodate such contemporary innovations as software-defined payloads, agile manufacturing processes, and rapid deployment iterations.

Historical experience underlines the importance of open, competitive entry. The FCC's 1972 "Open Skies" policy catalyzed significant advancements by lowering barriers to entry, stimulating competitive market dynamics, and drastically reducing transmission costs.[48] Revisiting similar deregulatory initiatives could unlock further competitive potential in today's increasingly crowded satellite landscape.[49]

Ultimately, modernizing the FCC's regulatory framework to reflect the dynamic realities of contemporary space commerce is essential. Without these reforms, U.S. companies will increasingly seek more permissive foreign regulatory environments, threatening American economic interests and diminishing the FCC's influence as a global regulatory leader.

III. Straightforward Regulations to Eliminate or Streamline

Eliminate civil monetary penalties designed to "punish and deter" the wrongdoer, rather than to "restore the status quo." Indeed, the Supreme Court's opinion in *SEC v. Jarkesy* may upend the FCC's enforcement processes.[50] In *Jarkesy*, the Court ruled that, when the U.S. Securities and Exchange Commission (SEC) seeks civil penalties against a defendant for securities fraud, the defendant is entitled under the Seventh Amendment to a jury trial; the agency must therefore bring the action in an Article III federal court. The FCC could in many cases face the daunting task of differentiating its enforcement procedure from the SEC's in *Jarkesy*.

Eliminate E-Rate for school buses. The FCC's order to subsidize Wi-Fi on school buses exceeds the agency's statutory authority.[51] The FCC is authorized to use E-Rate funds only "to enhance … access to advanced telecommunications and information services for … school classrooms … and libraries."[52]

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[48] Thomas W. Hazlett, Dongning Guo, & Michael Honig, *From "Open Skies" to Traffic Jams in 12 GHz: A Short History of Satellite Radio Spectrum*, 1 J. L. & INNOVATION 66, 70-74 (2023).

[49] *Id.* at 81-83.

[50] Ben Sperry & Eric Fruits, *How This Supreme Court Term Might Affect the FCC's Digital-Discrimination Rule*, TRUTH MARK. (Jul. 3, 2004), https://truthonthemarket.com/2024/07/03/how-this-supreme-court-term-might-affect-the-fccs-digital-discrimination-rule, *citing SEC v. Jarkesy*, 603 U.S. ___ (2024).

[51] Declaratory Ruling, *Modernizing the E-Rate Program for Schools and Libraries* (FCC 23-84, WC Docket No. 13-184, Oct. 25, 2023).

[52] 47 U.S.C. § 254(h)(2)(A); *see also Maurine Molak v. FCC & USA*, No. 23-60641 (5th Cir.).

Simplify broadband "nutrition labels." The FCC's broadband-nutrition-label rules, implemented in 2024, represent a significant regulatory intervention in how internet service providers (ISPs) communicate their service offerings to consumers.[53] The rules exceed the statutory requirements by mandating detailed disclosures—such as "typical" upload/download speeds and latency figures—that exceed the basic transparency provisions outlined in the Infrastructure Investment and Jobs Act. Additionally, the requirement for ISPs to update labels at all physical points of sale whenever service-plan changes impose administrative burdens not explicitly required by the statute.

Line discontinuance. Under "Delete, Delete, Delete," the FCC initiative should streamline 47 C.F.R. § 63.71 by simplifying the procedural requirements for carriers seeking to discontinue legacy copper lines. For example, the FCC might reduce the mandatory customer-notification period for nondominant carriers (currently 15 days) or eliminate redundant filing steps for automated approvals, particularly in markets with competitive alternatives. Additionally, the FCC could revise § 63.71's cost-benefit framework by aligning timelines for dominant carriers (60 days) with current market realities like widespread fiber or the availability of wireless, in order to accelerate infrastructure transitions. Merging overlapping provisions in § 63.71 and § 63.90 into a unified process for technology transitions could further reduce administrative burdens, while maintaining consumer safeguards through alternative-service requirements.

National Environmental Policy Act (NEPA) review for cell siting. Streamline exemptions and reduce oversight for cell-siting projects under 47 C.F.R. §§1.1301-1.1320. Routine environmental assessments for small-cell deployments are either redundant with state/local reviews, or outdated due to technological advancements. In either case, their elimination is justified under cost-benefit criteria. Expand categorical exclusions for low-impact projects—such as co-locations on existing structures—by revising §1.1306 to further limit environmental-assessment triggers. Delegate more NEPA-compliance responsibility to telecom providers through self-certification processes, aligning with the initiative's goal of reducing administrative burdens.

Outdated common-carrier regulations that no longer reflect current technological and economic conditions:

- **47 C.F.R., Chapter 1, Subchapter B, Part 32 USOA**. The Uniform System of Accounts was designed for a monopolistic, rate-of-return regulatory environment. Modern telecom markets are competitive, and carriers now use Generally Accepted Accounting Principles (GAAP). Retaining Part 32 imposes redundant compliance costs and stifles innovation by forcing outdated accounting practices on carriers.
- **47 C.F.R., Chapter 1, Subchapter B, Part 42 Preservation of Records of Communication Common Carriers**. Digital recordkeeping and automated systems have rendered manual preservation obsolete. The FCC's 2017 reforms to Part 32 already reduced recordkeeping

[53] Report and Order and Further Notice of Proposed Rulemaking, *In the Matter of Empowering Broadband Consumers Through Transparency* (FCC 22-86, CG Docket No. 22-2, Nov. 14, 2022).

burdens and overlapping state/federal rules create redundancy. Eliminating Part 42 would reduce administrative costs without compromising oversight.

- **47 C.F.R., Chapter 1, Subchapter B, Part 53 Special Provisions Concerning Bell Operating Companies**. These rules reflect a 1980s monopoly-era mindset. Today's broadband and wireless markets are highly competitive, and Bell operating companies (BOCs) face robust rivalry from cable, fiber, and wireless providers. Part 53 stifles BOCs' ability to innovate and compete on equal footing.
- **47 C.F.R., Chapter 1, Subchapter B, Part 61 Tariffs**. Tariff requirements were critical in monopoly markets, but thanks to competition, they are now largely obsolete. The FCC has already de-tariffed many services (*e.g.*, business data services). Further simplification would reduce administrative burdens and align with market-driven pricing.
- **47 C.F.R., Chapter 1, Subchapter B, Part 63 Contains Section 214 Requirements (Particularly 47 C.F.R. §§ 63.60-63.602)**. These rules, including §§63.60–63.602, were designed for a pre-globalized telecom market. Today's competitive landscape and streamlined processes (*e.g.*, streamlined Section 214 approvals for non-dominant carriers) render these provisions redundant. Removing them would expedite market entry.
- **47 C.F.R., Chapter 1, Subchapter B, Part 65 Interstate Rate of Return Prescription, Procedures and Methodologies**. Rate-of-return regulation is largely obsolete, as the FCC has transitioned most carriers to incentive-based frameworks (*e.g.*, price caps). Part 65 perpetuates inefficiencies by tying investment decisions to artificial returns, rather than market signals, thus discouraging modernization.

Eliminate payphone rules: 47 C.F.R. § 64.1310 establishes procedures for completing carriers to compensate payphone-service providers through call-tracking systems, quarterly payments, and detailed reports verified by sworn statements. This rule has become outdated due to the dramatic decline in payphone usage (from 2.1 million units in 1999 to negligible numbers by 2025) as mobile phones now fulfill 95% of public-communication needs, rendering the costly audit requirements and rigid certification processes disproportionately burdensome relative to the dwindling compensation amounts. The FCC formally eliminated these audits in 2018 and relaxed certification rules, recognizing that legacy compliance costs hindered carriers without meaningfully protecting payphone providers in a marketplace where such services no longer serve critical infrastructure roles.

Section 706 reporting requirements: Section 706 of the Telecommunications Act (47 U.S.C. § 1302(b)) requires the FCC to annually assess whether advanced telecommunications capability "is being deployed to all Americans in a reasonable and timely fashion." If deployment lags, the section mandates corrective actions, such as removing regulatory barriers. Critics argue that this framework has outlived its utility, as the statute's ambiguous terms like "availability" and "reasonable and timely"

now enable mission creep, with the FCC expanding its scope to include affordability, adoption metrics, and equity considerations beyond Congress' original physical-deployment focus.[54]

The reporting mandate duplicates newer initiatives like the Infrastructure Investment and Jobs Act's $42.5 billion Broadband Equity, Access, and Deployment (BEAD) program, while inviting regulatory overreach, as evidenced by recent FCC attempts to reinterpret Section 706 as an independent authority to impose broadband rate regulations and other policies unrelated to infrastructure deployment.[55] With 97% of U.S. households already having access to high-speed internet and private-sector 5G/fiber investments far outpacing federal programs, the Section 706 reporting process now primarily serves to justify expanding FCC jurisdiction, rather than addressing genuine deployment gaps.

Clarify revocation standards for automated calls and texts: Modify the revocation-of-consent rules for automated calls and texts by narrowing the definition of what constitutes a "reasonable" method for revoking consent. Alternatively, provide a clear safe harbor for callers who offer multiple straightforward and user-friendly revocation methods. The current standard—allowing revocation through "any reasonable means"—is overly vague and contributes to unnecessary litigation risks under the Telephone Consumer Protection Act (TCPA). These revised rules will become effective April 11, 2025.

Allow cable operators to merge with ILECs by extending forbearance: The current prohibition against mergers between cable operators and incumbent local-exchange carriers (ILECs) should be addressed through regulatory forbearance, building upon existing FCC precedents that permit cable operators to merge with competitive local-exchange carriers (CLECs). Maintaining this restriction unnecessarily hinders innovation, investment, and broader economic growth in the telecommunications sector.

Repeal or streamline PEG requirements to foster competitive fairness: Statutory requirements governing public, educational, or governmental (PEG) channels should be repealed entirely, or at minimum, streamlined significantly. These mandates place cable operators at an unjust disadvantage in today's highly competitive media landscape. Additionally, these obligations raise serious constitutional concerns by imposing unequal regulatory burdens, and potentially infringing upon cable providers' First Amendment rights.

Simplify or remove local review of franchise transfers: Eliminate the statutory requirement granting local authorities the power to review cable-franchise transfers. Alternatively, streamline procedures significantly to enable state and local entities to expedite decisions on franchise transfers. Current review processes impose unnecessary delays and regulatory burdens, hindering market efficiency and competitiveness.

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[54] *See Protecting & Promoting the Open Internet, TechFreedom & ICLE Legal Comments* (GN Docket No. 14-28, Jul. 17, 2014), at 62-91, *available at* https://laweconcenter.org/images/articles/tf-icle_nn_legal_comments.pdf.

[55] *Id.*

Outage reporting:

- **Remove mandatory 30-minute outage notification for wireline and VoIP providers:** Eliminate the obligation requiring wireline and interconnected voice over internet protocol (VoIP) service providers to notify 911 and 988 emergency-service providers within 30 minutes of a network outage. Additionally, remove the requirement for providers to exercise "special diligence" in obtaining and maintaining accurate 911/988 facility contact information. These provisions are overly burdensome and impose unnecessary administrative demands on providers.
- **Clarify that MVNOs are not obligated to submit outage reports:** Mobile virtual-network operators (MVNOs) typically lack direct access to critical network information necessary for accurate reporting. Moreover, outages are already reported by the underlying facilities-based providers. Given that these providers directly compete with MVNOs, relying on their reporting mitigates concerns about accuracy and removes redundant regulatory burdens on MVNOs.

IV. NOIs, NPRMs, and Other Agency Actions to Terminate

Conclude the notice of inquiry on the following matters:

- **Data caps.** *Data Caps in Consumer Broadband Plans*, FCC 24-106, WC Docket No. 23-199. ICLE research indicates that data caps and usage-based pricing in broadband services help ISPs to manage network resources effectively, recover infrastructure costs, and promote economic efficiency by aligning prices with consumption.[56] Regulating these practices could be counterproductive, as usage-based pricing creates fairness by eliminating cross-subsidization, potentially making broadband more affordable for light users and increasing overall adoption rates.

End consideration of the following matters in which a notice of proposed rulemaking was issued:

- **Requiring certain providers to submit an annual certification attesting that they have created, updated, and implemented cybersecurity and supply chain risk management plans.** *Protecting the Nation's Communications Systems from Cybersecurity Threats*, FCC 25-9, PS Docket No. 22-329.
- **Blackout rebates.** *Customer Rebates for Undelivered Video Programming During Blackouts*, FCC 24-2, MB Docket No. 24-20. ICLE research concludes that the proposed rules are unworkable and arbitrary.[57] Even if rebates could be reasonably and fairly calculated, the

[56] *See* Eric Fruits, Kristian Stout, & Geoffrey A. Manne, *The Economics of Broadband Data Caps and Usage-Based Pricing*, INT'L. CTR. LAW ECON. (Oct. 23, 2024), *available at* https://laweconcenter.org/wp-content/uploads/2024/10/Data-Caps-2024.pdf.

[57] Eric Fruits, Ben Sperry, Kristian Stout, & Geoffrey A. Manne, *Reply Comments of the International Center for Law & Economics, Notice of Proposed Rulemaking, In the Matter of Customer Rebates for Undelivered Video Programming During Blackouts, MB Docket No. 24-20*, INT'L. CTR. LAW ECON. (Apr. 8. 2024) *available at* https://laweconcenter.org/wp-content/uploads/2024/04/FCC-Blackout-Rebates-2024.pdf.

amount of such rebates would likely be only a few dollars and may be as little as a few pennies. In such cases, the enormous cost to the Commission, cable operators, and direct-broadcast-satellite (DBS) providers would be many times greater than the amount of rebates provided to consumers. It would be a much better use of the FCC's and MVPD providers' resources to abandon this rulemaking process and refrain from mandating rebates for programming blackouts.

- **Prohibiting early-termination fees and billing-cycle fees.** *Promoting Competition in the American Economy: Cable Operator and DBS Provider Billing Practices*, FCC 23-106, MB Docket No. 23-405. ICLE comments to the FCC in this matter conclude that the Commission should not regulate cable-television early-termination fees (ETFs).[58] Moreover, even if the Commission has authority to ban ETFs, doing so would be harmful to consumers and providers. Consumers who enter contracts with ETFs do so willingly with an expectation that they will pay a lower price over the term of their agreement. Producers benefit from reduced subscriber churn and uncertainty. Banning ETFs removes one dimension of consumer choice and provider competition. More importantly, a ban on ETFs would almost certainly lead to higher prices for cable and DBS consumers, the costs of which likely would swamp any speculated benefits of avoiding an ETF.
- **Disclosing AI content in political ads.** *Disclosure and Transparency of Artificial Intelligence-Generated Content in Political Advertisements*, FCC 24-74, MB Docket No. 24-211.
- **Handset unlocking.** *Promoting Consumer Choice and Wireless Competition Through Handset Unlocking Requirements and Policies*, FCC 24-77, WT Docket No. 24-186.
- **Independent and diverse video-programming sources.** *Fostering Independent and Diverse Sources of Video Programming*, FCC 24-44, MB Docket No. 24-115. In comments to the Canadian Radio-television and Telecommunications Commission (CRTC) in a similar matter, ICLE concludes that heavy-handed access regulations distort market incentives, while failing to achieve diversity goals.[59] Mandatory-carriage requirements and distribution quotas create inefficient cross-subsidization, where consumers pay higher prices for popular content to support niche programming that lacks genuine demand, while streaming has already dramatically reduced barriers to entry for content providers and given consumers unprecedented access to diverse programming options.
- **Priority for local journalism and other local programming.** *Priority Application Review for Broadcast Stations that Provide Local Journalism or Other Locally Originated Programming*, FCC

[58] Eric Fruits, Ben Sperry, & Kristian Stout, *Comments of the International Center for Law & Economics, Notice of Proposed Rulemaking, In the Matter of Promoting Competition in the American Economy: Cable Operator and DBS Provider Billing Practices, MB Docket No. 23-405*, INT'L. CTR. LAW ECON. (Feb. 5, 2024) *available at* https://laweconcenter.org/wp-content/uploads/2024/02/2024-Early-Termination-Fee-Comments-Final.pdf.

[59] Eric Fruits, Kristian Stout, & Geoffrey A. Manne, *Comments of the International Center for Law & Economics, The Path Forward–Working Towards a Sustainable Canadian Broadcasting System, Broadcasting Notice of Consultation CRTC 2025-2*, INT'L. CTR. LAW ECON. (Feb. 24, 2025), *available at* https://laweconcenter.org/wp-content/uploads/2025/02/2025-CRTC-Comments.pdf.

24-1, MB Docket No. 24-14. ICLE's comments to the CRTC conclude that preferential regulatory treatment based on content production creates market distortions without addressing fundamental industry challenges.[60] The current broadcasting ecosystem already provides strong incentives for stations to produce local content, based on consumer demand, while the proposed regulatory advantage would artificially favor certain business models and potentially burden the Commission with subjective content evaluations that could raise First Amendment concerns.

Regarding the agency's contemplated actions on Section 230 interpretation and investigations into CBS and YouTube TV, we acknowledge the Commission's intention to clarify legal standards and address public concerns about content fairness and platform neutrality. On one hand, pursuing these investigations could demonstrate responsiveness to significant public interests and enhance transparency. On the other hand, recent judicial developments suggest caution.

Specifically, following the Supreme Court's decision in *Loper Bright Enterprises v. Raimondo*, courts may no longer defer to agency interpretations previously supported by *Chevron*, potentially limiting the FCC's authority to interpret Section 230 effectively. Additionally, given the constitutional protections outlined in *NetChoice v. Moody* concerning platforms' First Amendment editorial rights, the Commission might encounter substantial legal obstacles. Similarly, the complaints against CBS and YouTube TV raise sensitive First Amendment concerns about editorial discretion. The Commission might reconsider whether continued investment of its resources in these areas is the most effective approach at this time, given the need to carefully balance regulatory clarity, constitutional principles, and efficient allocation of agency resources.

V. Conclusion

With this sweeping deregulatory initiative, the FCC has the opportunity to reshape U.S. communications policy to better reflect modern technological and market realities. By eliminating outdated, redundant, and burdensome regulations and streamlining existing frameworks, the FCC can significantly reduce compliance costs, foster innovation, and enhance competition across all segments of the communications industry. This approach not only aligns regulatory practices with contemporary market conditions but also adheres to constitutional principles by minimizing unnecessary governmental interference.

The recommendations outlined herein represent critical first steps toward a leaner, more efficient regulatory environment that prioritizes consumer welfare, economic growth, and technological advancement. We urge the Commission to fully embrace this deregulatory path, leveraging its existing statutory authority and judicial precedent to ensure that regulation remains narrowly tailored, justified by clear evidence of market failure, and conducive to a vibrant and competitive communications ecosystem.

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[60] *Id.*